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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,991	10/15/2003	Robert Cantwell	23937-43	7432

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EXAMINER
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GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/686,991	Applicant(s) CANTWELL ET AL.	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the beverage holder with a side configured to telescope (claims 11, 12, 15, 16, 20) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9, 14, 19 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodosh et al (6,116,045) (Hodosh)

4. Regarding claims 9, 14 and 21 Hodosh discloses a container with an insulated body (Figures 4a to 8), an insulated cover coupled with the body and an expandable beverage holder integrated with the cover (Figures 7a and 7b).

5. Regarding claim 19, Hodosh discloses a side of the beverage holder is configured to allow heat transfer (column 13, lines 30-41).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 5, 6, 8-10, 14, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub et al (6,364,329) in view of Spykerman, of record.

8. Regarding claims 1, 2, 9, 10 and 18, Holub et al discloses an insulated container (Figures 1A-1B, column 2, lines 53-65, column 3, lines 22-30). The top panel (110) has a beverage holder (116, Figure 10A, column 6, lines 17-34). The bottom of the cup

holder is of the same material as the lid and, thus, prevents heat transfer. Holub et al does not teach an expandable beverage holder. Spykerman discloses a beverage holder mounted in a flat panel with an expandable portion that is in a lowered position for larger containers and can be expanded upward to handle taller or smaller diameter containers (Figures 2 and 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Spykerman in the top panel of the container of Holub et al if an outwardly expanding beverage holder was desired so it could accommodate larger containers in one position or be expanded upward to handle taller or smaller diameter containers.

9. Regarding claims 3 and 14, the container holder of Holub et al as modified by Spykerman extends into the storage space by extending below the upper surface of the lid when the beverage holder is in the expanded configuration. This can be seen in Figures 10A and 10B where the bottom of the beverage holders (116) in the corners of the cover plainly extends below the upper surface of the cover when the cover is viewed from below (Figure 10B).

10. Regarding claims 5 and 19, the expandable portion of the beverage holder of Holub et al as modified by Spykerman is made of a resilient material, which would allow some level of heat transfer.

11. Regarding claim 6, the beverage holder of Holub et al as modified by Spykerman is expanded using an extending construction.

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12. Regarding claim 8, Holub et al discloses the body is coupled to the cover by hinges (115, column 2, lines 57-58).

13. Claims 1, 2, 5-10, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil et al (2005/0072181 A1) in view of Spykerman, of record.

14. Regarding claims 1, 2, 9, 10 and 18, Mogil et al discloses an insulated container (Figures 1A-1B, 6A, paragraphs 0095 and 0162). The top panel (334) has a beverage holder (342, Figure 6A, paragraph 0162). The bottom of the cup holder is of the same material as the lid and, thus, prevents heat transfer. Mogil et al does not teach an expandable beverage holder. Spykerman discloses a beverage holder mounted in a flat panel with an expandable portion that is in a lowered position for larger containers and can be expanded upward to handle taller or smaller diameter containers (Figures 2 and 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Spykerman in the top panel of the container of Mogil et al if an outwardly expanding beverage holder was desired so it could accommodate larger containers in one position or be expanded upward to handle taller or smaller diameter containers.

15. Regarding claims 5 and 19, the expandable portion of the beverage holder of Mogil et al as modified by Spykerman is made of a resilient material, which would allow some level of heat transfer.

16. Regarding claim 6, the beverage holder of Mogil et al as modified by Spykerman is expanded using an extending construction.

17. Regarding claim 7, Mogil et al discloses the body of the container is soft-sided and the outer edge of the top would have to be of the same soft-sided construction for the fabric hinge on the back edge of the top and to accommodate the zipper shown in Figure 6A.

18. Regarding claim 8, Mogil et al discloses the body is coupled to the cover by a fabric hinge (paragraph 0105).

19. Claims 1-3, 6, 8-14, 17, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub et al in view of Dennis et al (6,834,838) (Dennis).

20. Regarding claims 1, 2, 9, 10 and 18, Holub et al discloses an insulated container (Figures 1A-1B, column 2, lines 53-65, column 3, lines 22-30). The top panel (110) has a beverage holder (116, Figure 10A, column 6, lines 17-34). The bottom of the cup holder is of the same material as the lid and, thus, prevents heat transfer. Holub et al does not teach an expandable beverage holder. Dennis discloses a beverage holder mounted in a flat panel (Figure 2) with an expandable portion that that can be raised to provide better securement for a tall beverage container or allow secure placement of a beverage container with a handle (Figures 1-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Dennis in the top panel of the container of Holub et al to provide better securement for a tall beverage container or allow secure placement of a beverage container with a handle.

21. Regarding claims 3 and 14, the container holder of Holub et al as modified by Dennis extends into the storage space by extending below the upper surface of the lid

when the beverage holder is in the expanded configuration. This can be seen in Figures 10A and 10B where the bottom of the beverage holders (116) in the corners of the cover plainly extends below the upper surface of the cover when the cover is viewed from below (Figure 10B).

22. Regarding claims 6, 11 and 20, the beverage holder of Holub et al as modified by Dennis is expanded away from the storage space and collapsed using a telescoping construction (column 4, lines 11-16).

23. Regarding claim 8, Holub et al discloses the body is coupled to the cover by hinges (115, column 2, lines 57-58).

24. Regarding claim 12, the side of the beverage holder of Holub et al as modified by Dennis is configured to compress when moved to the collapsed configuration.

25. Regarding claims 13 and 17, the beverage holder of Holub et al as modified by Dennis is configured to lock in the expanded configuration (Figures 6 and 7).

26. Claims 1, 2, 6-13, 17, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogil et al (2005/0072181 A1) in view of Dennis et al (6,834,838) (Dennis).

27. Regarding claims 1, 2, 9, 10 and 18, Mogil et al discloses an insulated container (Figures 1A-1B, 6A, paragraphs 0095 and 0162). The top panel (334) has a beverage holder (342, Figure 6A, paragraph 0162). The bottom of the cup holder is of the same material as the lid and, thus, prevents heat transfer. Mogil et al does not teach an expandable beverage holder. Dennis discloses a beverage holder mounted in a flat panel (Figure 2) with an expandable portion that that can be raised to provide better



securement for a tall beverage container or allow secure placement of a beverage container with a handle (Figures 1-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the expandable feature of the beverage holder disclosed by Dennis in the top panel of the container of Holub et al to provide better securement for a tall beverage container or allow secure placement of a beverage container with a handle.

28. Regarding claim 6, the beverage holder of Mogil et al as modified by Dennis is expanded using a telescoping construction.

29. Regarding claims 6, 11 and 20, the beverage holder of Mogil et al as modified by Dennis is expanded away from the storage space and collapsed using a telescoping construction (column 4, lines 11-16).

30. Regarding claim 7, Mogil et al discloses the body of the container is soft-sided and the outer edge of the top would have to be of the same soft-sided construction for the fabric hinge on the back edge of the top and to accommodate the zipper shown in Figure 6A.

31. Regarding claim 8, Mogil et al discloses the body is coupled to the cover by a fabric hinge (paragraph 0105).

32. Regarding claim 12, the side of the beverage holder of Mogil et al as modified by Dennis is configured to compress when moved to the collapsed configuration.

33. Regarding claims 13 and 17, the beverage holder of Mogil et al as modified by Dennis is configured to lock in the expanded configuration (Figures 6 and 7).

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34. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodosh in view of Owsen (2,880,902).

35. Regarding claim 15, Hodosh discloses the invention except for the expandable beverage holder comprising a side configured to telescope into the storage space.

Owsen discloses a collapsible article capable of being a beverage holder that has a side configured telescope when folded to collapse or unfolded to expand. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an expandable beverage holder with a side configured to telescope as disclosed by Owsen in the container disclosed by Hodosh. Since Hodosh indicates other means of forming the collapsible receptacle can be used and it may be desirable to utilize a means that encourages more regular folding of the receptacle in the collapsed configuration (column 13, lines 16-30).

36. Regarding claim 16, the beverage holder of Hodosh as modified by Owsen is compressed when moved to the collapsed configuration.

### ***Response to Arguments***

37. Applicant's arguments filed October 18, 2006 have been fully considered but they are not persuasive. Applicant argues that neither Holub et al nor Spykerman teaches an expandable beverage holder. In response, Spykerman discloses a beverage holder that is moveable between a collapsed configuration and an expanded configuration as shown in Figures 2 and 3. Spykerman is configured to hold a beverage container in the expanded configuration. Spykerman thus, does meet the limitations of the claim with respect to the expandable beverage holder.

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38. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Holub et al and Spykerman are dealing with container holders and Spykerman teaches the desirability to have a beverage holder expand upward to provide a means for securing containers that are smaller in diameter and taller. Knowledge of this type of beverage holder would be available to one of ordinary skill in the art.

39. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

40. Applicant argues that Holub et al and Spykerman teach away from the expandable beverage holder of claim 1 because neither teaches an expandable beverage holder. In response, Spykerman teaches a beverage holder that moves from

a collapsed position as shown in Figure 2 to an expanded position of increased height as shown in Figure 3.

41. The applicant provides the same arguments as above for the combination of Mogil as modified by Spykerman. The same responses as presented above would apply.

### ***Conclusion***

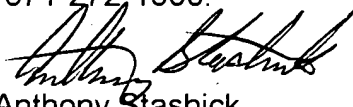
42. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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